IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
O.J.APPEAL No 9 of 1996
in
COMPANY PETITIONNo 35 of 1988
with
CIVIL APPLICATION No 85 of 1999

For Approval and Signature:
Hon'ble MR.JUSTICE B.C.PATEL
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH B DESAI

Versus

BIPIN VADILAL MEHTA

MR PV SATHE, SR COUNSEL with MR SANJANWALA
for petitioner
MR DS NANAVATI with MR. SI NANAVATI for Respondent No. 1
MR SAURIN A MEHTA for Respondent No. 4
MR SN SOPARKAR for Respondent No. 9,10

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE P.B. MAJMUDAR

Date of Judgment : 10/03/2000

C.A.V. JUDGMENT (Per Patel, J.)

This appeal is filed against the order passed on 12.3.1996 by learned Company Judge allowing the Company Application No. 113 of 1995 and dismissing Company Petition No. 35 of 1988 being barred by law of limitation.

2. By filing Company Petition No. 35 of 1988, the Company Court was moved at the instance of R.B. Desai & Others for rectification of the register of the Company. Respondents No. 2 and 3, by taking out the Company Application No. 113 of 1995 sought for an order to the effect that Company Petition No. 35 of 1988 be dismissed on the ground that petition is barred by limitation, without going into the merits of the petition. The said respondents prayed for other reliefs which are reproduced

in the judgment, and as the same are not relevant for the purpose of deciding this appeal, we are not referring to the same.

3. The petitioners in Company Petition No. 35 of 1988, are the share holders of Messrs. Sayaji Industries Limited (hereinafter referred to as the Company) came before the Company Court indicating that they are interested in the proper functioning and management of the Company and have filed the petition for proper utilisation and application of the funds and assets of the Company. It was alleged that respondent No.2, Bipin Vadilal Mehta was inducted as an Additional Director of the Company on 18.2.1982 and was appointed as Managing Director on the same date. As stated by the petitioners, one Priyam Bipin Mehta was inducted in the management of the Company from January 1982.

4. From the record it transpires that Vadilal Lallubhai Mehta was the Chairman and Managing Director of the Company. The said Vadilal Lallubhai Mehta and his wife Vimlaben gave birth to two sons, Bipin Vadilal Mehta and Suhas Vadilal Mehta and four daughters who are married. The family had huge properties. Over and above the shares of the Company, there was HUF Trust and other Private Limited Companies under the control of the said family. There was a Memorandum of Understanding (hereinafter referred to as the MOU) between the family members which is dated 30.1.1982. Reading the said MOU, it becomes clear that at the relevant time, all the Companies were managed by Vadilal Lallubhai Mehta and Suhas Vadilal Mehta. The main object of the MOU was to entrust the management of some of the Companies to Bipinbhai Vadilal Mehta and some to Suhas Vadilal Mehta by mutual transfer from one to other. It was decided that the management of the Company, and C.V. Mehta Private Limited was to be entrusted to Bipinbhai Vadilal Mehta while other Companies such as Industrial Machinery Manufacturers Pvt. Ltd., C. Doctor & Co. Pvt. Ltd., Mehta Machinery Manufacturers Pvt. Ltd., and Oriental Corporation Pvt. Ltd., were to remain with Suhas Vadilal Mehta. As per one of the conditions, the shares of the Company and C.V. Mehta Private Limited held by Suhas Vadilal Mehta and the members of his branch or the companies going to his share or Trusts or by Vadilal Lallubhai HUF or by Vimlaben Vadilal Trust shall be sold or transferred to Bipinbhai Vadilal Mehta or as he may desire. Clauses 7 and 8 of the details of understanding of the MOU read as under:-

(7). Bipinbhai Vadilal Mehta or his wife or

his son are not Directors in any of the Companies going to the share of Suhas Vadilal Mehta and Vadilal Lallubhai Mehta are Directors in Sayaji Mills Ltd., and Smt. Vimlaben Vadilal Mehta and Shri Vadilal Lallubhai Mehta, Suhas Vadilal Mehta and Chhayben Suhasbhai Mehta are Directors in C.V. Mehta Pr. Ltd. They shall resign as Directors of C.V. Mehta Pr. Ltd. and Bipinbhai Vadilal Mehta, his wife and/or son shall be appointed as Directors when Vadilal Lallubhai Mehta is satisfied that the entire understanding hereby recorded has been fully implemented.

(8). Shri Vadilal Lallubhai Mehta is also Chairman and Managing Director of Sayaji Mills Ltd. and Suhas Vadilal Mehta is Managing Director of Sayaji Mills Ltd. Both of them shall resign as Chairman and as Directors of Sayaji Mills Ltd., when Vadilal Lallubhai Mehta is satisfied that the entire understanding recorded herein is fully implemented and they have been released from all their guarantees including bank guarantees. Shri Suhas Vadilal Mehta, however, shall resign as Managing Director immediately on the appointment or just prior to the appointment of Shri Bipinbhai Vadilal Mehta as Managing Director of Sayaji Mills Ltd., by the Board of Directors of Sayaji Mills Ltd. Shri Vadilal Lallubhai Mehta shall, however, continue as Managing Director of Sayaji Mills Limited till the entire understanding has been completely implemented and he and Shri Suhas Vadilal Mehta both are released from all their guarantees including bank guarantees. Shri Bipinbhai Vadilal Mehta and Shri Priyambhai Bipinbhai Mehta, immediately on being appointed as Managing Director and Director of Sayaji Mills Limited, shall give their personal guarantee to the banks and all other financial institutions, wherever it is necessary, and get the release of all bank guarantees given by Shri Vadilal Lallubhai Mehta and Shri Suhas Vadilal Mehta to the banks and other financial institutions, immediately. The present constitution of the Board of Directors of Sayaji Mills Limited shall not be altered, save and except that Bipinbhai Vadilal Mehta and Priyambhai Bipinbhai Mehta shall be appointed as Directors of Sayaji Mills Ltd. until Shri Vadilal Lallubhai Mehta and Shri Suhas Vadilal Mehta are discharged from all their guarantees.

5. We are not concerned with the other properties in this Appeal, and, therefore, we are not referring to the arrangements made with regard to other properties in this judgment. By reading clause 28 of the MOU, it is clear that there were restrictions on the sale of shares held by Bipinbhai Vadilal Mehta and if he wanted to sell more than 3500 shares, he was required to offer the said shares to Suhas Vadilal Mehta at the break-up value of the said shares. We are not referring to further details as to the manner in which the transfer was required to be made in this behalf, but we are only indicating that the MOU was arrived only with a view to see that the business remains with the family members.

6. It has been specifically mentioned in the MOU that the same has been arrived at with the blessings, advice and guidance of Shri Vadilal Lallubhai Mehta and Vimlaben for increasing the love and peace in the family. In the concluding portion of the MOU, in paragraph 36, it has been stated that that "the parties hereto agree to faithfully abide by and carry out this understanding under the guidance of Shri Vadilal Lallubhai Mehta and his decision on every matter relating to this understanding or the interpretation or the carrying out of the same or in relation to any matter omitted to be mentioned in this memorandum but connected with or arising out of the matter herein mentioned shall be final and binding upon both the parties and both parties agree to faithfully carry out such decision of Shri Vadilal Lallubhai Mehta and which decision he can give in a summary manner and without assigning any reasons".

7. On 13.11.1982, there was a modification in the MOU. The amount to be brought in by Bipinbhai Vadilal Mehta towards the amounts payable by C.V. Mehta Private Limited was fixed at Rs.39,24,154-88. Shri Bipinbhai Vadilal Mehta agreed to pay and bring in immediately in C.V. Mehta Private Limited a sum of Rs.20,00,000/towards the amount required to be paid by C.V. Mehta Private Limited. The said amount was to be treated as a loan and Bipinbhai Vadilal Mehta was not entitled to claim or demand any repayment of the said loan from C.V. Mehta Pvt. Ltd. as long as the management thereof does not pass into the hands of Bipinbhai Vadilal Mehta . Reading the said Memorandum of Modification , it further appears that Bipinbhai Vadilal Mehta and his sons were to be appointed to the Board of Directors of Sayaji Mills Limited only after the the aforesaid sum of Rs.20,00,000/- was paid and brought in C.V. Mehta Pvt. Ltd. This amount was required to be brought in and paid by Bipinbhai Vadilal Mehta on the next day after the

transfer forms in respect of the shares of Sayaji Mills Limited held by Suhas Vadilal Mehta and his family members were to be handed over to Vadilal Lallubhai Mehta on behalf of Bipinbhai Vadilal Mehta and the members of his family. It was also agreed that the actual effect of such transfer was to be given by the Board of Directors of Sayaji Mills Limited only after the payment of the aforesaid sum of Rs.20,00,000/- by Bipinbhai Vadilal Mehta to C.V. Mehta Pvt. Ltd., was made. The remaining sum of Rs.19,24,154-88 was also required to be brought in as a loan by Bipinbhai Vadilal Mehta within a period of 24 months. Reading the agreement, it also transpires that the management of C.V. Mehta Pvt. Ltd. proposed to be transferred to Bipinbhai Vadilal Mehta under the MOU was not to be transferred till Bipinbhai Vadilal Mehta brings in the balance amount of Rs.19,24,154-88 towards the amount payable by C.V. Mehta Pvt. Ltd. to the members of the family of Vadilal Lallubhai Mehta and others.

8. It is also required to be noted that C.V. Mehta Pvt. Ltd. was holding shares of Sayaji Mills Limited . Despite the payment to be made to to C.V. Mehta Pvt. Ltd., clause 8 of the Memorandum of Modification provided as under :-

"8. The shares of Sayaji Mills Ltd. belonging to C.V. Mehta Pvt. Ltd., will not be transferred by C.V. Mehta Pvt. Ltd. to Shri Bipinbhai Vadilal Mehta or to the members of his branch or to his nominees but, shall continue to be held by the said C.V. Mehta Pvt. Ltd. C.V. Mehta Pvt. Ltd. shall, however, exercise the voting rights in respect of such shares held by it in favour of Shri Bipinbhai Vadilal Mehta for a period of 24 months. If, within the period of 24 months Shri Bipinbhai Vadilal Mehta has not paid and brought in the aforesaid further amount of Rs.19,24,154-98 (Rupees Nineteen lacs twenty four thousand one hundred fifty four & paise eighty eight only), along with interest, C.V. Mehta Pvt. Ltd., shall be at liberty to sell the shares of Sayaji Mills Ltd. owned and held by it to anyone, as it likes and decides and it will not be required to exercise the voting rights in respect of such shares of Sayaji Mills Ltd. in favour of Shri Bipinbhai Vadilal Mehta after the expiry of the said period of 24 months."

9. Thus, despite the payment to C.V. Mehta Pvt. Ltd. by Bipinbhai Vadilal Mehta , the shares of Sayaji

Mills Limited which stood in the name of C.V. Mehta Pvt. Ltd. were not to be transferred. Thus C.V. Mehta Pvt. Ltd., a Company holding shares of Sayaji Mills Limited, continued to be the share holders to the extent which it was holding. So far as the amount given to C.V. Mehta Pvt. Ltd., is concerned, in clause 10 of the Memorandum of Modification , it was provided as to how the said amount is to be utilized. The said clause reads as under :-

> "10. It is agreed that Shri Suhas Vadilal Mehta shall be entitled to utilize the amount brought in by Shri Bipinbhai Vadilal Mehta forthwith for the payment of the dues payable by C.V. Mehta Pvt. Ltd. to the members of the family of Shri Vadilal Lallubhai and others mentioned in para 3 hereinabove and/or to C. Doctor & Co. Pvt. Ltd., and other companies or associates of Shri Suhas Vadilal Mehta and that Shri Bipinbhai Vadilal Mehta has agreed that the management of C.V. Mehta Pvt. Ltd. will not be claimed or demanded by him before such payments are made by C.V. Mehta Pvt. Ltd. under the management of Shri Suhas Vadilal Mehta ."

10. With regard to the second instalment also, it is clear that it was for the purpose of certain arrangement as mentioned in paragraphs 11 and 12 of the Memorandum of Modification.

11. One Messrs. Santosh Starch Products having its office at 71 New Cloth Market, Ahmedabad, which was a supplier to the Company, received advance payment from the Company by three different cheques of Rs.10,00,000/-, Rs.5,00,000/- and Rs.5,00,000/-. The first two payments were made on 13.11.1982 and the last payment was made on 25.11.1982. It is, however, averred that the said M/s. Santosh Starch Products advanced amount of loan by three cheques, one in favour of Bipinbhai Lallubhai Mehta H.U.F. on 13.11.1982 for Rs.7 lakhs, another of Rs.6 lakhs to Bipinbhai Lallubhai Mehta on 13.11.1982 and thereafter the third of Rs.7 lakhs on 13.11.1982 to Priyam Vadilal Mehta. It is thus alleged that the Sayaji Mills Limited advanced the sum of Rs.20 lakhs which in turn Santosh Starch Products paid to Bipinbhai Lallubhai Mehta and his family. In this background, it is alleged that Bipinbhai Lallubhai Mehta had devised a scheme to dupe the funds of the Company for the purpose of giving effect to the MOU and Memorandum of Modification and thereby used the funds of the Company for acquisition of the shares of the Company. It is further alleged that

this is in violation of provisions contained in sec. 77 of the Act. It is further alleged that the aforesaid provision prohibits such transaction made directly or indirectly. It is further alleged that Bipinbhai Vadilal Mehta devised a scheme in terms of which he could use the funds of the Company for the purpose of purchasing and or acquiring shares of the Sayaji Mills Limited and C.V. Mehta Pvt. Ltd., which in turn was holding substantial shares of Sayaji Mills Limited.

12. It was further averred in the petition that a fraud came to be practised upon the statute and therefore, the petitioners, as share holders, are entitled to claim relief under section 155 of the Companies Act. The relevant provisions of the Companies Act, viz. section 77 and 156 are as under :-

77. Restrictions on purchase by company, or loans by company for purchase, of its own or its holding company's shares.-

(1). No company limited by shares and no company limited by guarantee and having a share capital, shall have power to buy its own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or of section 402.

(2). No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase of subscription made or to be made by any person of or for any shares in the company or in its holding company:

Provided
xxxx xxxx xxxx xxxx xxxx
(3). xxxx xxxx xxxx xxxx xxxx
(4). If a Company acts in contravention of sub-sections (1) to (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.
(5). Nothing in this section shall affect the right of a company to redeem any shares issued under section 80 or under any corresponding provision in any previous companies law.

155. Power of the Court to rectify register of members.-

(1). If -

(a). the name of any person -

(i) is without sufficient cause entered in the register of members of a company, or,

(ii). after having been entered in the register, is, without sufficient cause, omitted therefrom; or,

(b). default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be, a member;

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2). The Court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it things fit.

(3). On an application under this section, the Court-

(a). may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between member or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b). generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(4). From any order passed by the Court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (5 of 1908) -

(a). if the order be passed by a District Court, to the High Court.

(b). if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court.

(5). The provisions of sub-sections (1) to (4)

shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.

13. In the petition, the petitioners came out with a contention that they could not detect the fraud earlier, and hence there was a delay. However, from one Criminal Complaint which came to be filed by one Ashim Roy of the Trade Union, they came to know about the same somewhere in the month of May 1987. Notice was, therefore, given on June 14, 1987 and as the person did not act in accordance with law despite the notice, the petition was required to be filed interalia praying for rectification of the share registers of the Company and also for deletion of the name of Bipinbhai Lallubhai Mehta and other. In the circumstances, the petitioners have prayed that the delay may be excused.

14. The Secretary of the Company pointed out by filing an affidavit that the petition is barred by law of limitation, delay and latches, acquiescence and waiver. The petition came to be filed after more than five years of the transaction in question. It is required to be noted that the complaint was filed on 18th June 1987, but before that the petitioner No.1 gave a notice to the Company dated 17.6.1987 which is produced at Annexure 'D'. Thus, on behalf of the respondents, it has been pointed out in the affidavit that the statement made in the petition that the petitioners came to know about the same only after the complaint was filed in May 1987 is not correct, and in fact, it is contended that at the behest of the petitioners, the said complaint was filed. By filing an affidavit, it is further pointed out that the petitioners were aware about the transaction in question right from November 1982. Shri Vadilal Lallubhai Mehta, father of respondents No. 2 and 12, was the Chairman and Managing Director of the respondent No. 1 Company. Suhasbhai Vadilal Mehta was the Director of the respondent No. 1 Company and petitioner No. 1 Ramesh Desai was the Administrative Manager of the Company. It is pointed out by the learned Judge in the order that the alleged transaction had taken place on 12, 13, and 25 November 1982. As a matter of fact, on 18.11.92, Suhasbhai Vadilal Mehta had resigned as Managing Director, but had continued thereafter as the Director of the Company. Shri Bipinbhai Lallubhai Mehta was inducted as a Director of the Company and the Managing Director in the meeting of the Board of Directors where both Vadilal Lallubhai Mehta and Suhasbhai Vadilal Mehta were present. Vadilal Lallubhai

Mehta and Suhasbhai Vadilal Mehta had resigned from their respective posts on 7th Sept. 1983 and on the same date, the petitioner No.1, R.B. Desai also resigned from the Company. Keeping in mind these dates, the learned Company Judge has pointed out that everything was known to and within the knowledge of the petitioners and especially petitioner No.1, who was holding not only an important position in the Company but was also Power of Attorney holder, and in fact one cheque was signed by him. Thus, even if it is taken for granted that the amount was utilized, it was within the knowledge of the petitioner No.1. It is contended in the affidavit by the affected respondents that the amount has not been utilized for the purpose of purchasing the shares. Shares have not been transferred at that time or soon after the amount was taken from Santosh Starch and paid to C. Doctor & Company which was a shareholder. There is nothing on record to show that the share held by C Doctor & Company were transferred on the alleged transaction. Rectification of Register is a main question. When the shares stand in the name of C. Doctor & Company there is no question of rectification.

15. It was contended before the learned Company Judge that the petition is barred by limitation. The petitioner and the Respondent No.12, supporting each other, took the plea that the petition is not barred by limitation. A preliminary issue was raised regarding the limitation and the Court decided the matter. However, in the grounds of appeal, particularly in paragraphs 2.10 and 2.11, the appellant contended that the Court was addressed only on the question whether the question of limitation should be heard as a preliminary issue or not. In paragraph 2.11, it is specifically contended that the learned Company Judge could have at the highest framed the issue regarding limitation as preliminary question, but could not have disposed off the company petition as barred by limitation. In the grounds, a contention is also raised that the main Company Petition could not have been disposed of in such a manner. At the highest, learned Company Judge could have only framed the issue regarding limitation as a preliminary issue.

16. At the time of hearing of this Appeal, the learned counsel for the appellant did not press paragraphs 2.10 and 2.11 and thus, we are only required to decide whether the learned Company Judge was right in rejecting the Company Petition on the ground that it was barred by limitation. At this juncture, it would be relevant to refer to the following order passed by the Division Bench in the matter on 23.4.1996 while admitting

the Appeal:

> "Admit. Learned advocate Mr. Nanavati has drawn our attention to para 2.10 and 2.11 of the appeal and has canvassed that the appellants must be put to election whether to file a review application or to press the appeal and if they want to press the appeal, then they cannot insist for grounds mentioned in paras 2.10 and 2.11. It would be open for him to raise this contention at the time of hearing the appeal".

17. Learned Company Judge considered the provisions contained in section 3 of the Limitation Act, and Order 14 Rule 2 and 4 of the Civil Procedure Code. Section 3 of the Limitation Act 1963 empowers the Court to dismiss a suit or an appeal or an application filed or made after the period of limitation, although limitation has not been set up as a defence.

18. In the case of ANIL GUPTA vs. DELHI CLOTH & GENERAL MILLS CO. (DELHI) reported in (1983) 54 COMPANY CASES 301, the Delhi High Court considered the question of delay, when there was no allegation as to fraud. The Delhi High Court held as under:-

> "... as the application under s. 155 of the Companies Act should be filed within three years of the impugned transfers, effected on August 11, 1973 and September 20, 1974, the present petition was prima facie barred by time. The contention that limitation would start from the date of knowledge was not well founded. According to art. 137 of the Limitation Act, limitation runs from the date on which the right accrues. Section 17 of the Limitation Act provides that where fraud or mistake has occurred, limitation shall not begin to run till the same is discovered by the plaintiff/applicant. In the petition no allegation of fraud had been made against the respondent against the respondent Company and the petitioner had been unable to show as to how s.17 of the Limitation Act applied to this case.

19. In the case of SMT KAUSHALYA DEVI vs. NATIONAL INSULATED CABLE CO. OF INDIA LTD. reported in (1977) TAX LR 1928 (Delhi) - which is referred to in the judgment of ANIL GUPTA (supra), the Court distinguished that the delay could not be condoned under S. 5 of the Limitation Act as no application under that section had

been filed, and an oral representation for condonation was requested after the respondent filed a reply on December 11, 1978, raising the objection about limitation. The petitioner had waited for nearly two and half years before filing the petition and no reasons were given for condonation of delay. From the statement filed by the Company as many as 42 transfers had taken place during this period and none of the transferees were parties to the petition. In case disputed or complicated questions of fact and law arises, recourse cannot be made to section 155 of the Companies Act. It was the case of the petitioner that the shares were not given to SRD for the purpose of sale and no consideration was received. According to SRD, on the other hand, the shares were sold to him. As to which of the two versions was correct would require detailed investigation into the facts and would amount to deciding a dispute between an alleged purchaser and an alleged seller of the shares and such questions cannot be decided in the proceedings u/s. 155.

20. Thus, it is clear that there should be a valid explanation as to why there was an undue delay in filing the petition under section 155 of the Companies Act for exercise of jurisdiction by ordering the rectification of the register.

21. No allegation of fraud in the eye of law have been averred, much less established. Learned Company Judge pointed out that there is not a slightest suggestion in the pleadings that due to fraud, the petitioners were kept away from the knowledge of their right to initiate the proceedings. With regard to the submissions made by the learned counsel about fraud, the learned Company Judge arrived at a conclusion that the contention with regard to fraud cannot be accepted. Not only that, but the learned Company Judge was of the view that he would go to the extent of saying that there was not only no proof of fraud but even the averments of fraud made in the petition did not amount to averments of fraud in the eye of law.

22. Learned counsel for the petitioners submitted that in the instant case, considering the provisions contained in section 17 of the Limitation Act, it must be held that there was a fraud and petitioners were entitled to benefit of the provisions contained in section 17 of the Limitation Act. Learned counsel relied on the decision of CHAITANYA DAS vs. RANJIT PAL reported in AIR 1938 CALCUTTA 263. In that case, the decree holder by fraudulent misrepresentation and suppression of truth, subsequent to the sale, went on realising the rent from

the plaintiff for some years. The Court held that it was an act of fraud on the part of the decree holder which kept the plaintiff out of his right to institute the suit within the proper period of limitation. In the circumstances, the Court held that the plaintiff was entitled to the benefit of Sec. 18 of the Limitation Act and the suit as brought by him was not barred, eventhough Art. 62 of the Limitation Act was held applicable to it. This decision is purely based on the facts of the case, and the same would not be of any help to the appellants in the instant appeal.

23. In the case of SATISH CHANDRA vs. SATISH KANTHA reported in AIR 1923 PC 73, with regard to charge of fraud and collusion, the Court pointed out as under :-

> "Charge of fraud and collusion must, no doubt, be proved by those who make them - proved by established facts or inference legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjuncture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape."

24. Learned Company Judge considered the decision of the Apex Court in the case of MAJOR SS KHANNA VS. BRIG. F.J. DILLON reported in AIR 1964 SC 497, SAURASHTRA CEMENT & CHEMICAL INDUSTRIES LTD & ORS. vs. ESMA INDUSTRIES PVT. LTD. & ORS. reported in 30(2) GLR 1263, JASUBEN MADHUSUDAN PANDYA vs. MANHARLAL NARANDAS BHATT reported in 1990 (1) GLH 199 for examining the contention raised by the learned counsel for the petitioner that the question of limitation is not purely a question of law.

25. Where any issue relates to jurisdiction of the Court or a bar created by any law for the time being in force, it is open for the Court to postpone the settlement of other issues until the preliminary issue with regard to jurisdiction of the Court or such bar has been determined, and the Court may deal with the suit in accordance with the determination of such preliminary issue. It is the discretion of the Court which is required to be exercised keeping in mind the well recognised principle of law. If it is a mixed question

of law and facts, the Court would not decide such a question as a preliminary issue. Where an evidence on the alleged preliminary issue will be the same or almost the same as in the suit itself, then in such a case the preliminary issue is not to be heard and tried as a preliminary issue. However, from the perusal of the amended provisions of rule 2 of order 14 of C.P.C., it is very clear that now there are two categories of issues which can be decided as preliminary issues. Those issues of law as relate to (i). jurisdiction of the Court, or, (2). bar to the suit created by any law for the time being in force. An issue of law can be decided as a preliminary issue where it is such that it does not necessitate investigation into the facts and it relates either to the jurisdiction of the Court or the said being barred under any prevailing law and that in the opinion of the Court, the decision of the issue will result in the decision of the whole suit or part of the suit. The discretion in this regard must be exercised on the basis of sound judicial principle.

26. In the case of Major SS Khanna (supra) the Apex Court pointed out that where the issues both of law and fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first. In the case of Saurashtra Cement (supra), there was mixed question of law and facts and therefor there was no pure question of law. In the case of Jasuben (supra), learned Single Judge by reading the provisions contained in Order 14 (2), observed that the Court cannot take up the issue of law as a preliminary issue unless it falls within the substituted rule. On a conjoint reading of section 3 of the Limitation Act and order 14 Rule 2, the learned Company Judge observed as under :-

> "As seen above, the substituted rule permits the Court to decide the case on an issue of law only if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law, for the time being in force."

27. The learned Company Judge, without hesitation, arrived at a conclusion that the case or part thereof can be decided on an issue alone, if that issue falls within the purview of the provisions contained in order 14 Rule 2. Learned Company Judge made it clear that because of the reasons which he is going to assign in the course of the order, the issue appears to be an issue of law alone. With regard to question (A), the learned Company Judge held that the residuary article will apply in case where

no period of limitation is prescribed elsewhere. In that view of the matter, the period of limitation would be three years and period of limitation will start running from the date when the right to apply accrues. The petition for rectification of the Register has not been made within the stipulated period of three years. It was filed after a period of six years. Therefore, primafacie the petition was barred by limitation.

28. It was contended before the learned Company Judge that in view of the provisions contained in Section 17 (1) (b) of the Limitation Act, 1963, the petition would be within the prescribed time limit because there has been an invention of the practice of fraud by the respondents No. 1,2, and 3 and they have rendered themselves guilty and answerable by practising fraud upon the statute and upon the Company.

29. Learned Company Judge pointed out that the repeated recitals regarding fraud are devoid of any particulars whatsoever. Learned Company Judge also pointed out that the law of pleadings require that an allegation of fraud is to be made specifically and that the particulars thereof are to be furnished and later on, with a view to succeed on the basis of the plea of fraud, the fraud as alleged is required to be established. Legislature has cast a duty on the party coming before the Court alleging fraud etc. to clearly state it in the pleadings. Rule 4 of Order 6 reads as under :-

> "In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

30. Learned Company Judge examined the pleadings, and on examination, the learned Company Judge was constrained to observe the requirements of this rule has not been complied with. At more than one place, the petitioner had stated in the petition that there has been a fraud upon the statute, upon the Company and upon the share holders. Learned Company Judge observed that much before, in 1915, the Privy Council, in the case of BAL GANGADHAR TILAK AND OTHERS vs. SHRINIVAS PANDIT AND OTHERS reported in AIR 1915 PC 7 , while dealing with the provisions contained in order 6 rule 4 of the C.P.C. pointed out as under:-

"Under the Contract of Law of India, as well as by ordinary principles, coercion, undue influence, fraud and misrepresentation are all separate and separable categories in law. They may overlap or may be combined. But in pleadings general allegations, however strong may be, the words in which they are stated are insufficient even to amount to an averment of fraud of which any Court ought to take notice."

31. In the pleadings, if general allegations are made, however strong may be the words in which the allegations are narrated, are insufficient even to amount to an averment of fraud of which a Court ought to take notice. Learned Company Judge opined that the Court would not take notice of such averments if such averments are without necessary particulars. In our opinion, the learned Company Judge has rightly observed that :-

"If such general allegations do not amount to an averment of fraud, necessarily, the Court cannot be called upon to take notice of that fact. The Court would be bound to take notice of those averments which are, or which can be said to be averments in eye of law."

32. Learned Company Judge has also pointed out that the Apex Court, in the case of AFSAR SHAIKH AND OTHERS vs. SOLEMAN BIBI AND OTHERS reported in AIR 1976 SC 163, while examining section 16 of the Contract Act in respect of undue influence, made it abundantly clear that general allegations would not do. The Apex Court made it clear that :

"Although 'undue influence', 'fraud', 'misrepresentation' are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are in view of Order 6 Rule 4, read with Order 6 Rule 2, of the Code of Civil Procedure, required to be separately pleaded, with specificity, particularity and precision."

33. Learned Company Judge on examining the provisions contained in Order 6 Rule 4 and following the aforesaid decision observed as under:

"Thus Indian Courts have also said that, though the concept like 'undue influence', 'fraud', and 'misrepresentation' etc. are cognate vices and may, in part, overlap in some cases, regard being

had to the provisions contained under Order VI Rule 4 of C.P.C. they are required to be separately pleaded with specificity, particularity and precision. It is also pointed out that, a general allegation in the plaint in this respect, would not do. It was a case of an alleged undue influence upon the plaintiff who was a simple old man of 90 years, who had reposed great confidence in the defendant, But, this general allegation, was found to be, much too insufficient, to amount even to an averment of undue influence."

34. The learned Company Judge arrived at a conclusion that for obtaining the advantage under section 17 of the Limitation Act of 1963, the person claiming the benefit or advantage has to show to the satisfaction of the Court that, the knowledge of his right upon which a suit or application is founded was concealed by the fraud by the other side. The emphasis is not on the prevention of the exercise of right which was concealed. The party claiming to have the benefit within the purview of section 17 of the Limitation Act of 1963, therefore, shall have, undoubtedly, to establish that, because of the fraud of the other side, his knowledge of his right was concealed. The learned Company Judge was required to observe this as it was contended that the period of limitation was not to run until the plaintiff discovered the fraud or with reasonable diligence discovered it. The learned Company Judge considered the decision of the Apex Court in the case of YASHWANT DEORAO vs. WALCHAND RAMCHAND reported in AIR 1951 SC 16 wherein the Court pointed out that one has to say that because of fraud, the knowledge of his right to have recourse of law was concealed by the other side by practicing fraud upon him. Learned Company Judge, after considering the provisions contained in section 17 of the Limitation Act observed that the legislature has given scope to the defendant to contend that with reasonable diligence he could not have discovered the fraud or the mistake earlier. Learned Company Judge held that :

"I have already taken a view that all was done in presence of everybody concerned. Even if it was not so, the petitioners could have discovered this with reasonable diligence. On this count also, they would not be able to bring their case within the purview of Section 17 of the Limitation Act, 1963".

35. In the absence of establishing any fraud, we are

of the opinion that the case cannot be carried any further.

36. At this juncture, it would be relevant to mention at the cost of repetition that the respondents, in their affidavit-in-reply pointed out that Vadilal Lallubhai Mehta was present along with petitioner Ramesh B Desai at the relevant time. Suhas Vadilal Mehta, though resigned as Managing Director, continued as Director of the respondent Company. This happened in pursuance of a resolution passed by the Board of Directors of the Company when both Vadilal Lallubhai Mehta and Suhas Vadilal Mehta were present. Vadilal Lallubhai Mehta continued and functioned as Chairman and Managing Director even thereafter. The last cheque dated 25.11.1982 given to M/s. Santosh Starch Product by the Company as part payment of the total sum of Rs.20 lakhs was drawn and signed by none else than the petitioner No. 1 Ramesh B Desai himself. From this it clearly appears that the whole arrangement was known to the parties and was within knowledge of the petitioners. It was also within the knowledge of respondent No. 12 Suhas Vadilal Mehta who supports the case of the petitioners.

37. At this stage it would be relevant to refer to a judgment of the Delhi High Court in the case of RAMESH V DESAI reported in AIR 1988 DEL 288. The present petitioner preferred writ petition before Delhi High Court under Article 226 of the Constitution of India. The Company (Sayaji Mills Limited) was respondent No. 3 before the Delhi High Court. The said Company was selling its product through a sole selling agent, M/s. C. Doctor & Company Pvt. Limited which was in starch business since 1914. The family arrangement by way of a MOU between the parties, which we have referred in the earlier part of this order, has also been referred to by the Delhi High Court. Since M/s C. Doctor & Company was vested with Suhas Vadilal Mehta, it was decided to separate the Starch Division and it was agreed to be taken over by a new Company, L.G. Doctor Associates Pvt. Ltd.. Respondent No. 3 proposed to appoint M/s. L.G. Doctor Associates Pvt. Ltd. as its Sole Selling Agency. In the General Meeting, one P.K. Vyas objected to the appointment of M/s. L.G. Doctor Associates Pvt. Ltd. as Sole Selling Agent of the Company and approached the Company Law Board. It appears that the application was rejected by the Company Law Board. Thereafter, on 13th August 1984, another application was made in view of certain new facts. In view of the direction of the Company Law Board, fresh application was submitted on 31st August 1984 for approval of Sole Agent with effect

from 13th October 1983. It appears that personal hearing was granted to the Company, Sole Selling Agent and P.K. Vyas who objected to such appointment. After the hearing was concluded on 29.12.1984, the petitioner No. 1 Ramesh B Desai who had since resigned as Manager of the Company, holding approximately 375 shares, filed his objections to the application. On 23.1.1985, the Company Law Board, by a non-speaking order, accorded its approval to the appointment of Sole Selling Agent.

38. Mr. Nanavati, learned advocate appearing for the respondent No.1 Company drew our attention to this decision with a view to point out that the petitioner, and in particular petitioner No.1, was aware about the entire transaction. In paragraph 32 of the judgment, the Delhi High Court has discussed about the family arrangement. It was pointed out to the Court that Suhas Vadilal Mehta and his group have set up three petitioners to raise obstacles in the smooth functioning of the Company. It was pointed out that in fact the petitioner No. 1 Ramesh B Desai, who is petitioner No. 1 before us also, was the Administrative Manager of the Company and the family arrangement were made operative, resigned immediately after Suhas Vadilal Mehta and Vadilal Lallubhai Mehta resigned from the Company. It was pointed out to the Delhi High Court that the petitioners were holding 376 shares of the face value of Rs.37,600/-, amounting approximately to only 0.6% of the total paid up equity capital, which shows that they do not represent the share holders of the Company to any material extent and have no say at all in the subject matter of the petition. Only two individual share holders objected to the resolution, which was the subject matter before the Delhi High Court, namely: P.K. Vyas and V.S. Joshi. It was pointed out that the petitioners before the Court never objected to the resolution, inasmuch as the petitioner No. 1 send proxy in favour of the resolution. In fact the petitioner No. 3 of that petition gave a speech complementing the performance of the management. It was these three persons who were set up by the rival group which is acting behind the scene. It was submitted before us that the conduct of the petitioner No.1 was not bonafide. Mr. Nanavati pointed out this decision with a view to point out to us that the petitioner No. 1 herein was acting not of his own but at the behest of others. He was Power of Attorney holder of the Company. He was signatory to the cheque and he being one of the highest person in the management of the Company, he was knowing about the day to day working of the Company. He further submitted that there is a fallacy in the contention raised by the petitioner with regard to knowledge about

the fraud. Learned Company Judge has observed that the petitioners came to know about the fraud on the date when the Criminal complaint came to be filed before the competent Court exercising jurisdiction at Narol (Ahmedabad Rural). It is stated before us that the petitioner No. 1 gave notice on 14.6.1987, only after getting knowledge of filing of prosecution. It is required to be noted that the complaint was filed on 18.6.1987 but before that date notice was given to the Company, and, therefore, it is difficult to believe the version put forward by the petitioners that they came to know only when the criminal complaint was filed. Looking to the events, it clearly appears that the petitioner No. 1 knew very well about the transactions. Actions have been taken only after resigning. The present proceedings came to be filed as in earlier proceedings he failed.

39. It is required to be noted at this stage that the Gujarat High Court quashed the proceedings of Criminal Complaint which was filed by one Asimkumar Roy who was General Secretary of Hind Mazdoor Kisan Panchayat against Bipin Vadilal Mehta and others. The Apex Court confirmed the order passed by this Court (see (1998) 1 SCC 133). Before the Apex Court, it was submitted that on the relevant date, i.e. 13.11.1982, the contesting respondents were not in control of the management of the Company, and they were not even defacto Directors and according to the MOU, both original and modified, and accused (Bipin Vadilal Mehta) came to the picture only after the discharge of the liability and not earlier to that. Therefore, the accused (Bipin Vadilal Mehta) could take over the control and management of the Company only after the transaction complained of was over. Before the High Court, affidavit was filed by the complainant. The relevant portion reads as under (see paragraph 13 of (1998) 1 SCC 133) :-

"The said document also contained a recital that transfer of the management of Sayaji Mills Ltd., and the appointment of Shri Bipinbhai Vadilal Mehta and Shri Priyambhai Bipinbhai Mehta on the Board of Directors thereof are only to be made after Shri Bipinbhai Vadilal Mehta has paid and brought in C.V. Mehta Pvt. Ltd., the sum of Rs.20.00 lakhs. No doubt this document has been signed on 13th November, 1982 but it clearly transpires that move for this modification must have started prior to 13th November 1982 and both the petitioners having finalised the deal with M/s. Santosh Starch products Pvt. Ltd., to obtain loan of Rs.20.00 lakhs in their private

and personal capacity, the documents came to be executed on 13th November 1982."

40. The Supreme Court pointed out that the contesting respondents will come into picture only after the liability contemplated under the modified MOU was discharged. In other words, the respondents No. 1 and 2 could have come into picture only after the transaction complained of has taken place, and it was for the father of the first and twelfth respondents, Vadilal Lallubhai Mehta, who was Managing Director of Sayaji Industries Limited (new name of Sayaji Mills Limited) to say that the entire understanding has been implemented. When the transaction in question took place, Respondents No. 1 and 2 could have played no part in that transaction as they were not even ordinary directors at the relevant time in the Company.

41. Reading the decision of the Apex Court, Delhi High Court and the present proceedings, it is very clear that the desire of late Shri Vadilal Lallubhai Mehta has not been fulfilled, and one group is contesting litigation soon after the MOU, and it is very unfortunate.

42. Learned Company Judge also rejected the contention raised by the petitioners that there was sufficient cause within the meaning of section 5 of the Limitation Act, 1963, and, therefore, delay should be condoned. The case of the petitioners is based on the allegation of fraud practised by the Company on the statute and share holders. In the absence of particulars, learned Company Judge expressed an opinion that the averments pleaded in the nature of fraud would not amount to averments of fraud in the eye of law. When there was no pleading, the question does not arise to consider whether there was sufficient cause or not, and in view of this, the learned Company Judge has rightly rejected the contention.

43. The learned Company Judge also rejected the contention raised on behalf of the petitioners about the continuing wrong. Learned Company Judge considered the decision in the case of THE PRESIDENT, KALOL DISTRICT MUNICIPALITY, KALOL vs. BAI CHAMPA D/O SHETH BHATUBHAI LALLUBHAI AND ANOTHER reported in 17 GLR 44. The relevant portion reads as under :-

"The essence of a continuing wrong, is that the act complained of creates a continuing series of injuries and is of such a nature that it renders

> the doer of that act responsible for the said continuance. Where the injury complained of is complete on a certain date there is no "continuing wrong" even though the damage caused by that injury might continue. If, however, the act is such that the injury itself is continuous, then there is a "continuing wrong" and the case is governed by Sec. 23 of the Limitation Act. However, in cases where the wrong committed infringes a right which is of a continuing nature and which can be enjoyed every day and every moment, that wrong is of a continuing character and gives rise to a fresh cause of action every moment it continues".

44. The above case was pertaining to the erection of a cabin on a disputed land. The action was taken and it was pleaded that the wrong was continuing wrong because by the erection of the cabin, the right of easement or right to keep certain piece of land open, which was a right of continuing nature, was found to be infringed. The learned Company Judge pointed out that in the instant case, the moment the transaction was over, the wrong was completed and it cannot be equated with the continuous effect thereof. The learned Company Judge further held that if the wrongful act causes an injury which is complete, there is no continuing wrong even through the damage resulting therefrom may continue for a longer time or in a continuous manner.

45. The learned Company Judge also held that it should not be overlooked that the instant case is a case of dispute between the members of the family, the head of which, Shri Vadilal Mehta wanted to see the division of the companies during his life time; Certain arrangements were made under which, parties were directed to act in particular manner. The dispute essentially is a family dispute. The other shareholders appear to be non-concerned with the matter. In view of this, it could hardly be urged that when the petition is found to be barred by Law of limitation and gross delay and laches could be attributed to the petitioners, the Court should venture to examine the alleged transaction on merits and to correct and rectify the Register. In the result, the learned Company Judge allowed the Company Application and dismissed the Company Petition.

46. Learned Advocate Mr. Nanavati at the initial stage submitted that in the instant case, in view of the provisions contained in section 155 of the Companies Act, an appeal lies on the ground mentioned in section 100 of

the Civil Procedure Code, 1908. He submitted that in the absence of substantial question of law, the present appeal preferred by the appellants is required to be dismissed. He submitted that when application is rejected on the ground of delay, it does not involve a substantial question of law. He submitted that the petitioners have to set out specifically the substantial question of law.

47. In the case of PANCHGOPAL BARUA vs. UMESH CHANDRA GOSWAMI reported in (1997) 4 SCC 713, the Apex Court held as under in paragraph 7 of the judgment:

> "A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. The existence of a "substantial question of law" is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC."

48. In the case of KSHITISH CHANDRA PURKAIT vs. SANTOSH KUMAR PURKAIT reported in (1997) 5 SCC 438, in paragraph 10, the Apex Court held as under:-

> "10. We would only add that (a) it is the duty cast upon the High Curt to formulate the substantial question of law involved in the case even at the initial stage; and, (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 CPC in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceedings to hear the appeal without formulating the

substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to examine its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed, without conforming to the above discipline.

49. In the case of DNYANOBA BHAURAO SHEMADE vs. MAROTI BHAURAO MARNON reported in JT 1999 (1) SC 266, the Apex Court, in paragraph 11, held as under:-

"It has to be kept in view that the learned Single Judge was exercising jurisdiction under Section 100 C.P.C. as it was amended in 1976. A mere look at the said provision shows that the High Court can exercise its jurisdiction under Section 100 C.P.C. only on the basis of substantial question of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial question of law. The impugned judgment shows that no such procedure was followed by the learned Single Judge. it is held by a catena of judgments by this Court, some of them being Kshitish Chandra Purkait vs. Santesh Kumar Purkait and others JT 1997 (5) SC 202 and Sheel Chand v. Prakash Chand JT 1998 (6) SC 192, that the judgment rendered by the High Court under Section 100 C.P.C. without following the aforesaid procedure cannot be sustained. On this short ground alone, this appeal is required to be allowed."

Sub-Section (3) of Section 100 of Civil Procedure Code reads as under :-

"In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal".

50. Learned counsel appearing for the petitioners submitted that in the instant case, the substantial

question, according to him, is as under:-

"Whether the petition is barred by the Law of Limitation within the meaning of section 17 of the Limitation Act?".

51. According to the learned counsel for the petitioners, the petition was not barred by limitation within the meaning of section 17 of the Limitation Act. We have discussed in detail in the earlier part of this judgment, confirming the decision of the learned Single Judge that the petition was barred by limitation, and hence this appeal has no merit. Moreover, this question cannot be said to be a question of law.

52. What is substantial question of law has been explained by the Honourable Supreme Court in its decision reported in AIR 1962 SC 1314 in the case of CHUNILAL V MEHTA vs. C.S. & M. CO. LTD. In paragraph 6, the Apex Court held as under:-

" ..... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties, and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

53. Applying the test, we are of the opinion that the question raised before us is not of general, public importance. The petitioners were aware about the transaction and concerned respondents Bipin Vadilal Mehta and his son were not in the management at the relevant time as it is clear from the MOU and also as recorded by the Apex Court on the basis of same facts which are raised before us in a different proceedings. It is very clear from the decisions and the facts that it is merely a family dispute, and public at large are not concerned with that. It is also required to be noted that on account of change in the management including the

petitioners, none is adversely affected - to be more precise, nothing is produced on record. As pointed out by the Delhi High Court, the petitioners are holding not even one per cent of the share capital. Therefore, their rights are substantially not affected. The fact that whether the petition is barred by limitation or not, is a question to be determined on the facts pleaded before the Court, and that is not a substantial question of law, which would be required to be decided by the Court in exercise of powers under section 100 of Civil procedure Code unless the findings recorded by the Court are perverse or unwarranted on the basis of the material placed on the record. Before us time was taken by the learned counsel appearing for the parties to settle the disputes between the family members amicably, and we granted time. This itself is sufficient to hold that petitioners are playing in the hands of others and dispute raised before the Court is not real and genuine. In the instant case, the learned Company Judge has rightly observed that no averments are made in the petition to bring the case within the four corners of sec. 17 of the Limitation Act. Therefore, in our view, even it would not be a question of law, apart from substantial question of law. In our opinion, at the cost of repetition, we would indicate that it was a family arrangement at the hands of Vadilal Lallubhai Mehta, who was the Chairman and Managing Director of the Company and who continued to be so even after the transaction. Neither Suhas Vadilal Mehta nor Vadilal Lallubhai Mehta ever objected to the inclusion of Bipin Vadilal Mehta and his son as Directors of the Company. It was within their knowledge. The arrangements which were arrived at were complied with. It is the petitioners who were aware about the facts and particularly as the last cheque was signed by the petitioner No. 1 himself speaks a lot about his conduct. Under the circumstances, the plea raise is palpably absurd, and in our opinion, the question would not be a question of law, much less a substantial question of law. It is also to be noted that when the amount was received from the dealer, neither Bipin Vadilal Mehta nor his son nor both were directors of the Company and amount was paid to C. Doctor & Company only. There is nothing on record to show that shares were transferred in their names from the name of C. Doctor & Company.

54. It was also contended before us by the learned advocate Mr. Nanavati that the Company is not before the Court, and, therefore, no relief can be granted against the Company. It is required to be noted that in the instant case the Company is not joined as a respondent.

However, the Secretary of the Company is party respondent No.3. Learned counsel drew our attention to a decision in the case of RADHE LAL vs. EAST INDIA RAILWAY reported in AIR 1926 PATNA 40 to point out that if upon a fare reading of the plaint it is made out that the description of the defendant is a mere error and that the Company is really defendant, then the suit may proceed against the Company. Learned counsel submitted that the Secretary is joined as a party and he represents the Company and on account of inadvertence, instead of righting the name of the Company through its Secretary, if the name of the Secretary is written first and the name of the Company is written subsequently, it cannot be said that the Company is not prosecuted. This issue is not required to be discussed any further as that would be relevant question only if some directions are required to be given to the Company, and not otherwise. Hence without going into the merits of this issue in the case, we dispose of this appeal.

55. In the result, we are in agreement with the views taken by the learned Company Judge. This appeal stands dismissed with cost, which we quantify at Rs.5000/-.

56. In view of paragraph 50 of the above order passed in the O.J. Appeal, Civil Application No. 85 of 1999 does not survive and it stands rejected accordingly.

(B.C. PATEL, J.)

csm./ (P.B. MAJMUDAR, J.)